UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

SOUTHERN DIVISION

- - -

THE HONORABLE JAMES V. SELNA, JUDGE PRESIDING

UNITED STATES OF AMERICA,
Plaintiff,

SACR-05-36-JVS

ALLEN E. JOHNSON,
Defendant.

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Santa Ana, California

June 2, 2008

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SANTA ANA, CALIFORNIA; MONDAY, JUNE 2, 2008; P.M. SESSION

THE CLERK: Item 16, SACR-05-36-JVS, United States of America versus Allen Johnson.

Counsel, please state your appearances.

MR. STOLPER: Good afternoon, Your Honor. Andrew Stolper on behalf of the Government.

THE COURT: Good afternoon.

MR. RIDDET: And James Riddet for Mr. Johnson, who is present at counsel table.

THE COURT: Good afternoon.

Have you all had a chance to review the draft sentencing memorandum?

MR. STOLPER: Yes, Your Honor.

MR. RIDDET: Yes, Your Honor.

THE COURT: Mr. Stolper, do you have any additional comments?

MR. STOLPER: Your Honor, I'd like to, if I may, explain how we arrived at the four-level departure and hopefully solve some of the -- I know that the Court said it was perplexed by the disparity, and I want to just lay out what happened so that the Court understands how the Government arrived at where we arrived.

The reason the Government referred to Mr. Ketner's PSR sentence was that's what the Government anticipated at the time that we arrived at our plea agreement with Mr.

Johnson. Subsequently, we pled Mr. Ketner out to a sentence that was below that, and as a result of that disparity, the Government now feels that Mr. Johnson is entitled to come in underneath Mr. Ketner.

It's not that the Government is saying that Mr. Ketner's sentence was incorrect in any way, shape, or form, but simply at the time when we struck the agreement with Mr. Johnson, we didn't have an agreement with Mr. Ketner. As a result, they ended up being not consistent at the end of the day. It's through this departure that the Government is attempting to make them consistent.

Does that respond to the Court's concern?

THE COURT: I think so.

MR. STOLPER: Okay. Beyond that, the Government would submit on its paper.

THE COURT: The Government recommended a lower sentence.

MR. STOLPER: That's correct, Your Honor. The Government still recommends a 12-month -- a year-and-a-day sentence. The Government believes that that's at the low end of the guideline range. The Government has agreed to recommend a low-end sentence as part of its plea agreement, and we stand by that agreement.

THE COURT: Okay, thank you.

Mr. Riddet.

MR. RIDDET: Thank you, Your Honor. Your Honor, with the Court's permission, I just have a few general comments that I'd like to --

THE COURT: Let me just share with you one concern I have at the outset. There seems to be a disconnect between the conduct described in your several sentencing positions and the conduct described in the plea agreement.

MR. RIDDET: In what way?

THE COURT: In that I wouldn't recognize the conduct -- if I were looking for the conduct in the plea agreement, I really wouldn't find it.

MR. RIDDET: If you look at this factual basis in the plea agreement, it seems to me, Your Honor, the factual basis is exactly the same as what I have argued in my sentencing brief, and that is that the honest services fraud took place at the time that Mr. Johnson recognized that there was a problem in that he heard that checks had been bouncing, and it was after that time that he continued to allow Mr. Ketner to have the funds at the MCR end.

We did not -- and there were, I am sure Mr. Stolper will agree, quite a few discussions about what the factual basis would say. We did not agree to a factual basis which said that there was an honest services violation from the time that Mr. Johnson agreed to the proposal by Mr. Ketner to send the funds there. We agreed to a factual

basis that said the honest services violation took place once Mr. Johnson realized there was a problem and then adhered to and acceded to Mr. Ketner's explanation that I work it out with the banks. At that point, he admitted in the plea agreement that he violated his honest services obligation to the lenders. I think there is a difference.

THE COURT: Well, the position you take with regard to the money laundering is certainly different.

MR. RIDDET: True, Your Honor. At the time, we entered into the money-laundering agreement -- I think it's important for the Court to understand that the money that is being laundered is not the money that Ketner stole from these loan funds.

THE COURT: I understand.

MR. RIDDET: It is the commissions that he was getting from the warehouse lenders, and we did agree to a larger sum. Then we had to do an analysis and we realized that although we certainly are going to stick with the plea agreement, that it may well be that using that number overstates his culpability in that it looked to us then, after we had this woman do the audit, that the vast majority if not all of the sharing of the commissions with Mr. Ketner took place actually before Mr. Johnson learned that there was a problem.

We've kind of used March as the date. In Ketner's

statement to my investigator, he thinks it could be April or May, so it's within that time frame, somewhere between March and May.

Your Honor, there are, as I see it -- when Your Honor focuses on the issue of loss in this case, there are, as I see it, three players involved. The man who took the money for his own purposes is Mr. Ketner. He is the one that instructed Mr. Hadari to send the money to a non-funding account rather than to do what everyone agrees Mr. Johnson told him to do, and that is to send the money to one of Ketner's funding accounts.

That's what Hadari told my client's accountant that's what he was instructed to do, and he had no explanation as to why he didn't do it. Ketner is the one who used a substantial portion of these funds for his own use, either buying a yacht or a car or funding other things. A lot of the money went into his own operating account and was used to pay payroll.

Not one dime of those funds which Mr. Ketner stole ended up in Mr. Johnson's pocket, not pocket one dime of that money. The only compensation that he did receive was the closing fees that were paid to him by the warehouse lender. As to that, Mr. Ketner required him to split those fees with him, so he got half of his normal commission.

As Mr. Stolper has pointed out, Ketner received a

sentence of 57 months. Now let's look at the second player. The second player, it seems to me, is this gentleman by the name of Hadari. Hadari was an individual who was supposed to be working for Mr. Johnson. You have as an exhibit to the first sentencing brief -- by the way, I understand Your Honor has read our original sentencing brief and the two supplements; right?

THE COURT: Right.

MR. RIDDET: Okay. You have an exhibit where Mr. Johnson's accountant talks with Mr. Hadari, and he admits that he was told to send the money to the funding accounts and didn't do it. He didn't do what Mr. Johnson told him to do. Instead, he followed Mr. Ketner's instructions and sent funds to Ketner's other accounts of which he had 20 or 25 different accounts.

Mr. Hadari has never been prosecuted. Clearly, Your Honor, when you look at the facts which I don't believe are contested in this case, Mr. Hadari was in effect an aider and abettor to Mr. Ketner's scheme to steal these funds.

The third player is Mr. Johnson. He entered into a plea agreement in which he stated that he violated his honest services obligation to the lenders by continuing to send money to Ketner after he learned that there might be a problem. Rather than putting a stop to it right then, he

was persuaded by Mr. Ketner that Mr. Ketner would work out whatever the problem was. If there is any fault for Mr. Johnson, it is agreeing to Mr. Ketner's request rather than putting a stop to it and returning to the funding of loans himself, which had been done prior to the time that Ketner changed the arrangement.

If you are going to, Your Honor, apportion the fault, and that is apportion the fault for the losses of around $10 million, it seems to me that Your Honor could easily find and should find that 95 percent of the fault that caused the loss in this case is Ketner. He stole the money, and he misappropriated it for his own use.

Now, there are essentially -- by the way, as Your Honor pointed out as Mr. Stolper has indicated and indicated in his brief, we were contacted rather early before any charges were filed. Mr. Johnson came in, sat in on I think more than one proffer session, agreed to cooperate, and Your Honor has as an exhibit to Mr. Stolper's brief with rather extensive notes of the proffer session that he gave, and then rather than requiring a trial, he entered a plea of guilty.

Now, there essentially are two issues, Your Honor, as to the sentencing decision which you estimate you have to make. The first is whether or not Mr. Johnson should spend any time in jail or whether he should instead receive a

sentence of house arrest or home detention as we recommend, as we request.

The second is whether the Court should apportion the restitution -- and I will get to Your Honor's apportion of the restitution in a moment. That is a second issue, and of course part of the restitution issue is if you order restitution to be paid in a certain amount how it is to be paid.

Let me talk about the first issue. I am not going to go into great detail because these have been argued in great detail in writing. So let's talk about the home detention issue versus jail. We have argued that extensively in our brief, and we've attached a number of exhibits which I know Your Honor has read.

Here are the factors which I think indicate that this should be a sentence of home detention rather than jail. Mr. Johnson is a 61-year-old man with no prior record. He has, as we pointed out -- and attached is a letter from his doctor -- some rather significant arthritis problems. He lost his insurance when he and his wife split up, and he had to then go on this Cobra coverage which Your Honor knows is only good for a year.

He tried to stop taking the medication, which helped, because he felt that if he was taking the medication at the time that Cobra expired in September of this year,

just a couple months away, that he would not be insurable. So he tried to stop taking the medication, and he couldn't stand it. It was too painful to him.

So he went back to taking the medication, and his doctor points out that that does help alleviate his condition to some extent, although he is still not able to perform like a normal, healthy person.

In all probability, Your Honor, I think it's fair to conclude that when his coverage expires under Cobra, he is not going to be insurable, and he is going to end up paying out of his own pocket about $15,000 a year for this very expensive insurance.

Next, as I pointed out just a minute ago, Mr. Johnson has not received any of the funds that Ketner misappropriated. Next, other than funding him the loans himself, which is obviously what he should have done once he learned there was a problem, it seems to me, Your Honor, that you could find that absent that, he did everything that he could to make sure that the loans were funded because what he did is he very carefully instructed his employee, Hadari, to send the money directly to a funding account.

Now, because of that, because of his very limited role in the actual loss in this case, I have argued and I argue today that applying that loss figure to calculate the guideline range overstates the degree of his culpability;

and in addition to that, it is a basis, a substantial basis, for role reduction.

Next, in his background he served two combat tours in Vietnam and has been decorated to some extent for that service. He has lost permanently his license to practice law. Most if not all of the loss occurred according to our audits before he learned there was a problem. So these losses were during the time that he assumed that Mr. Hadari was complying with his instruction to send the money to a funding account.

Lastly, as Your Honor points out in your tentative, he is caring for his elderly and ailing parents. In fact, because he needs to be with them, he had moved in with them a few months ago and is helping them get around and taking them to doctors.

I think, Your Honor, that all of those factors are a significant basis for the Court to vary the sentence below the guideline level and to impose a sentence of house arrest or home detention.

Now let me turn to the issue of restitution. We addressed two issues: first of all, the amount; and secondly, how that is to be paid. We've cited to Your Honor Section 3664(h) of Title 18, which gives the Court the power to apportion the restitution. That section indicates two factors that are to be considered -- the level of

contribution to the loss and economic circumstances.

We have provided the Court, I think, with abundant evidence showing clearly that his level of participation or contribution to loss is extremely minor, and we have provided, I think, substantial evidence that his assets consist of one asset, and that is his retirement account, which he estimates now is about $800,000.

Now, the Government argues and Your Honor states in your tentative that had it not been for Mr. Johnson's agreement to continue to send the money to Ketner or his company, MCR, for funding, that Ketner would not have been able to steal the money as he did. There is no question that that is true, but I think it ignores what Mr. Johnson did try to do, and that was his mistake. That's why he's here, because he did that.

He did not say to Mr. Hadari, "Do whatever Ketner wants. If he wants it sent to a nonfunding account, do that. If he wants to buy a car with it or if he wants to buy a yacht with it, do that." He said to Mr. Hadari, "Send that money to a funding account because I want these loans funded." He did not know what Ketner was going to do, and I don't think, Your Honor, there is one iota of evidence to the contrary, one piece of evidence that would show that Mr. Johnson at any time up until the time he learned the checks were bouncing had any idea that Ketner had it in his mind to

take this money for himself and not fund these loans.

Where one person, Your Honor, steals the money and makes use of all the proceeds himself and one person simply does one act which allows that person to do what he does, it seems to me there is an enormous difference in the contribution of those two people to the loss itself.

Ketner himself recognizes that in two statements -- one to my investigator and one to another individual who used to work for the Orange County District Attorney's Office -- recognizes that Al Johnson had no idea what Ketner was going to do.

As to the amount to be ordered, we did indicate at one time early in the brief that there was somewhere in the neighborhood of $2 million that may have been funded -- or, I mean, not funded but sent to Ketner or to one of his nonfunding accounts after March and after Mr. Johnson learned that there was a problem. Now we have done this additional analysis, and it appears that it may well be much less than that.

So the amount of restitution to order is a difficult concept. At one point we argued that it appeared that, since we thought there were $200 million in loans and the Government was claiming a loss of $10 million or as much as $14 million, that that's a very small percentage. If we use $2 million, we take five percent of that, and that

should be the amount of restitution that he should pay.

There is evidence which would support an order that Mr. Johnson pay no restitution if Your Honor accepts our argument that the restitution should be determined by his culpability once he learned that the funding was not being done.

THE COURT: Is his culpability zero percent?

MR. RIDDET: His culpability is not zero percent. I cannot stand before your Your Honor, nor will Mr. Johnson, and say his culpability is zero percent. What I can say, Your Honor, is that the culpability -- and I think the statute says the degree of contribution to the loss -- is minimal. I mean, if you put it in percentages, I think honestly you could say five, six, seven percent compared to 95 percent or more from Ketner as to what caused this loss. The guy who caused this loss mainly is Mr. Ketner.

Then, of course, the economic circumstances is the second factor which that section in Title 18 points out. As to that second factor, it's pretty clear that but for his requirement, which he lives off of, he's broke. He has expenses each month of over $4,000, and he gets $700 or $800 by way of income. So he doesn't have anywhere near enough to live on. So that factor also, I think, mitigates strongly in favor of a small amount of restitution.

Then if the Court does order restitution, the next

question is how it should be paid. Your Honor seems to acknowledge the letter from his accountant --

THE COURT: I think it's part wrong, though.

MR. RIDDET: You do say in a footnote that you think -- his benefits don't trigger until 65, so I --

THE COURT: Well, is this a peculiarity of the plan, or is this just the function of usual tax laws from withdrawing from an IRA?

MR. RIDDET: May he answer that, because he knows more about the extent of that?

THE COURT: Sure.

THE DEFENDANT: The plan calls for retirement age at 65 and penalties prior to that time.

THE COURT: Are in the plan itself?

THE DEFENDANT: Yes, Your Honor.

THE COURT: Okay.

MR. RIDDET: Now, Your Honor, the Booker Court made clear that the provisions of Title 18, Section 3553(a)(2), is mandatory. That is the one thing that is binding on the Court now. The Guidelines are no longer, as Your Honor points out in your tentative decision.

Section 3553 states that the Court shall impose a sentence sufficient but not greater than necessary to comply with the purposes set forth in Subsections (a) through (d). I respectfully submit, Your Honor, that a sentence of jail

under the very unique circumstances of this case is greater than necessary to accomplish those goals and that such a sentence would violate the statutory mandate of section 3553; whereas, a sentence of home detention would be sufficient to accomplish those goals.

As to restitution, I will submit that on the papers. Mr. Ketner, as I understand it -- I assume was sentenced by Your Honor -- has been ordered, I am sure, to pay a full amount of restitution. It seems appropriate since he is the one who stole the money. So the question is: What do we do with Mr. Johnson on the question of restitution?

I do just have, if Your Honor will bear with me, just a couple of comments with regard to your tentative decision. You state at the top of page 3 of your tentative decision that there is little doubt that as a literally pivotal player in the scheme, his assistance was of great value in unraveling this complex fraud. There is no question that he was a pivotal player in providing cooperation to the Government, because without his cooperation they may not have had anywhere near the information they did have.

But then later on that same page you state: "However, he was certainly aware that he was taking the unusual step of not funding the loans directly." I don't

know that it's all that clear from the evidence that we have that he was aware that this was unusual. Here is a man, Mr. Ketner, that he had known for years and had known was in the mortgage business for years and had offices all over the country, and Mr. Ketner makes this request to fund the loans at his end stating that he has got some new software.

Now, Mr. Johnson's prior partner, who was a much more experienced closing agent than Al Johnson, had no problem with this arrangement, and he agreed to it also. We have attached as one of the exhibits a copy of the faxes that he sent to one of the other banks that was a victim in this case showing that he's also doing what Mr. Ketner requested.

So I don't think, Your Honor, with all due respect to what you said in the tentative, that Mr. Johnson is necessarily aware that he was taking an unusual step, in light of the fact that he's dealing with someone who is experienced in the business, and he sees his partner who is also experienced in the business readily agreeing to Ketner's request.

On page 4, Your Honor says that the Court puts little stock in the argument that all of Johnson's closing activities were usual and customary up to the transfer of funds. I am not sure why Your Honor has said that. I am aware of no evidence which would indicate that other than

the funding itself -- and I will get to Your Honor's comment that that's the pivotal part of the process -- that other than that, he did not do the other duties that a closing agent usually does. I think there is no evidence to the contrary, and Mr. Johnson takes the position that he did.

Then Your Honor says that the actual cutting of the check or the funding is a critical step. No question about it. It is the critical step. But this is a case in which Mr. Johnson tried as hard as he could try other than not adhering to Mr. Ketner's request to make sure that the loans were funded, and the way he did that was to instruct his employee, who was supposed to follow his direction, to fund the loans into a funding account and not a nonfunding account.

The amount of assets that Mr. Johnson has is $800,000. Your Honor refers to that as significant. It would be significant to many people. But when you consider that he has no income and for the rest of his life -- he is 61 now -- that is all he is going to be able to live on. I mean, his own doctor says he probably can't carry on usual employment activity. He's in a great deal of pain and has limited mobility in his arms and hands. He has to live off that. So he has to pay these extensive medication costs plus his normal living expenses, and there's no other place to do it. So although he has a nice retirement account, he

really does need to live off of it.

Your Honor on page 5 talks about the old rule that when you were in zones, it depended on whether you could get house arrest or whether it had to be half and half and all that, and Your Honor points out that that is merely advisory. I know that in many cases the Government argues, well, it may be advisory, but that's the Government's policy, that if you're in a certain zone, you can't get home detention.

I assume Your Honor recognizes that despite the fact that a sentence may be in Zone A, B, C, or D, the Court could give home detention for any amount because that 5C1.1 is no longer mandatory. I don't think that Mr. Stolper's recommendation of a year and a day falls, as you put it, woefully short of the need to reflect the magnitude of the fraud, even taking into account his substantial cooperation. I think it's excessive in terms of the sentence that is appropriate in this case when you consider the very, very limited role that he had.

I imagine other than that, Your Honor, I would submit unless Your Honor has any questions. I believe that this is probably the most unique bank fraud case that I have ever had. Most of the cases that Your Honor has before you and most of the cases which I have handled involve individuals who have been directly involved in the fraud

either because they have submitted false loan packages and they have got something out of it. This is a very unique circumstance, and it is one in which Mr. Johnson exercised bad judgment, yes; intended to have the banks lose money, no.

Because of that, I ask Your Honor with all due respect to reconsider your intention to give him 15 months and seriously consider a sentence of home detention or at least some home detention rather than all jail.

Unless Your Honor has any questions, I will submit.

THE COURT: No, thank you.

Mr. Stolper.

MR. STOLPER: Thank you, Your Honor.

Your Honor, it's always a difficult position for the Government to on the one hand argue for substantial assistance, and then on the other hand to argue for in this case jail. In this case, it's not as hard because it's the very substantial assistance the defendant was able to give, his knowledge that he was able to provide to the Government about what went on at MCR that was so valuable to us. So it's two sides of the same coin I guess.

On the one hand, Mr. Johnson should be commended, and the Government has done what it does to commend people who come in and cooperate with the Government for providing

the information he did with a generous 5K, but the flip side of that coin is the reason the defendant was able to come in and give that information is because he was incredibly involved in what was going on at MCR. I think respectfully you can't have it both ways. His substantial assistance reflects the fact that he had extensive knowledge about the illegal activity at MCR.

I want to make a couple comments about what Mr. Riddet had to say, especially going to the question of whether this is a unique case or not, and I agree that in many ways it is a unique case because seldom do we have an escrow agent or an attorney who is not fulfilling their obligations.

Here Mr. Johnson was in the classic sense of the word a gatekeeper. It was his job to watch the bank's money and to make sure it went where it was supposed to. By advocating that role, Mr. Johnson did precisely what the bank told him not to do, which was hand the keys over to Mr. Ketner, and Mr. Ketner quite predictably took those keys and ran with it.

The failing here of Mr. Johnson is not listening to what Mr. Ketner had to say. That was a failing. The failing of Mr. Johnson was not adhering to the obligations he accepted by becoming the bank's closing agent, to close the loans with the money as he was instructed to do so.

Part of what is especially troubling about this fraud is not just -- one of the things Mr. Riddet points out that Mr. Johnson didn't get the bank's money that was requisite to the borrowers. That's true. Instead, Mr. Johnson took the bank's money as the closing agent and essentially abdicated his role. Some of the best evidence of that abdication is not just the fraud that took place at MCR after the defendant abdicated his obligation as the gatekeeper, but to look at what Mr. Johnson and Mr. Ketner did with that money.

That was not money that they simply put in their accounts. That was money that they literally laundered around the world back to Nevada under false -- with false names and false IDs. It's like a spy novel in terms of what they did with that money. That from that Government's perspective is a powerful knowledge point that what the defendant knew early he was doing was absolutely wrong and absolutely fraudulent.

The final comment I want to make goes to the question of Mr. Hadari. As I understand Mr. Riddet's argument is that Mr. Hadari didn't follow the defendant's instructions and sent money to the wrong account of Ketner. I want to be clear on what the argument is and what it's not. As I understand Mr. Johnson's instructions as he maintains today, Mr. Hadari was supposed to get the money

in; and instead of closing loans as he was obligated to do, he then wire the money to Mr. Ketner's account.

Now, according to Mr. Johnson it was the wrong account. Instead of going to the funding account it went to the operating account. From the Government's perspective that's completely beside the point. The money shouldn't have been sent to MCR directly at all. It doesn't matter which account it went to. It was the defendant's obligation to close those loans.

The banks weren't looking at Mr. Hadari, and they weren't looking at Mr. Ketner to close the loans. They were looking to Mr. Johnson. It's in that failure that Mr. Johnson finds himself here looking at potential jail time. It's the Government's position that after balancing both sides of this equation, Mr. Johnson's tremendous involvement and tremendous knowledge and his abdication of his responsibilities at MCR has to be looked at through the prism of the fact that he came in and from the Government's perspective did right by helping the Government to go after the person who did personally benefit from it.

While the Government tremendously appreciates what the defendant did, the Government still believes that what the defendant did was wrong and needs to be reflected in the Government's recommended sentence of a year and a day in jail. There is an important difference in terms of

punishment between home confinement and prison, and the Government believes that Mr. Johnson's abdication here warrants a prison sentence, not a substantial prison sentence but a prison sentence.

As to the question of restitution, the Government respectfully disagrees with the defendant's position. When the defendant wired that money to MCR after he knows that Mr. Ketner is bouncing checks, after he knows Mr. Ketner is using the money for his own purposes, for him to claim now that he had no idea that that money wasn't being properly used, that there was no evidence to support that, is just not supported by the evidence.

The evidence is quite clear by his own factual basis that he was well aware that after February or March of 2000 that he knew Mr. Ketner wasn't using the money properly and yet he kept shipping it to him. From the Government's perspective, it doesn't matter which account of Mr. Ketner's he was shipping it to. He was shipping it to Mr. Ketner, and he should not have been doing that. As a result, for the defendant to now claim that he is not co-extensively responsible for the restitution simply is not supported by the facts.

Unless the Court has other questions, the Government would submit.

THE COURT: It seems to me one factor that I may

not have weighed sufficiently is the fact that when you compare Mr. Ketner who was living the high life and spending people's money, Mr. Johnson got nothing more than his ordinary fee, and he only got half of that.

MR. STOLPER: Factually, Your Honor, I think that's absolutely true, that Mr. Johnson was proportionately much less of a beneficiary of the fraud than Mr. Ketner. The Government believes that that's properly considered in a year-and-a-day sentence, because while Mr. Ketner is living the high life, it was Mr. Johnson who was making that possible.

As I said, the banks weren't looking to Mr. Ketner. They were looking to Mr. Johnson to make sure that Mr. Ketner couldn't get his hands on the money. For Mr. Johnson to now somehow claim that he is not responsible for Mr. Ketner basically stealing the money and living the high life I think is belied by the fact that the banks looked to him to be the closing agent.

So, Your Honor, while the Government actually thinks the Court's reading of the facts is correct, that Mr. Ketner was stealing the money and personally benefiting from it, to the extent Mr. Johnson was not, we can't help but point out that Mr. Johnson is the one that made that possible.

THE COURT: He sure didn't get much out of it.

MR. STOLPER: No, Your Honor, he did not. He got a split closing fee. But as the Court well knows, that's not the metric that we the Government uses. It's not a question of just personal benefit. It's a question of what harm he caused to victims.

THE COURT: I appreciate it, but it's certainly a distinguishing factor when you look at Mr. Ketner's situation.

MR. STOLPER: I agree, Your Honor. I think that there is no question Mr. Ketner was the prime beneficiary of the fraud.

THE COURT: Where did the money come from from the transfers that are discussed as being laundered overseas in the plea agreement?

MR. STOLPER: Those are from closing fees, Your Honor.

THE COURT: Okay, thank you.

Anything further, Mr. Riddet?

MR. RIDDET: Just very briefly, Your Honor. Mr. Stolper argues that the banks told Mr. Johnson not to do what he did and told him to fund the loans himself. There is no evidence of that. In fact, if Your Honor looks at the supplemental brief that we filed, the first supplemental brief, Exhibit C is a number of faxes which Mr. Johnson's prior partner -- I will wait a minute until Your Honor finds

that.

THE COURT: Got it.

MR. RIDDET: All right -- which Mr. Johnson's prior partner, James Dooley, is sending off to one of the warehouse lenders, LaSalle National Bank -- I'm sorry. It's Regions Bank. You will see at the top of the first page it says to Customer Service, Regions Bank in Georgia.

So this lender -- and we don't have any reason to believe that it's any different with the other lenders -- is being told that the money is going to MCR. That's what this fax says. The money is going to LaSalle National Bank in Chicago, Illinois, account name, Mortgage Capital Resources. That's Ketner's company, which we sometimes shorthandedly refer to as MCR.

So there is no evidence that any bank said to Mr. Johnson, nor has Mr. Stolper presented any, which said the banks told him not to have someone else fund the loan. With regard to Mr. Stolper's argument that it doesn't matter where the money goes, doesn't matter whether it was a funding or nonfunding account. Well, of course it does.

If Mr. Johnson says to Mr. Hadari, "Send it wherever you want," that is far different than saying to Mr. Hadari, "Send it to a funding account." Why is it different? Because if he says the former, it's an acknowledgment that the money may not be used to fund;

whereas, if he says the latter, it's certainly an indication of his intent that he do it.

One of the factors in 3664(h) that the Court takes into consideration is economic circumstances. The first is the degree of contribution to the loss, and the second is the economic circumstances. I don't think there is any argument that Mr. Johnson got very little out of this, half of his closing fees, and is not leading nor has he ever led the high life. He's living with his parents right now and helping him them in their various illnesses.

If Your Honor orders restitution in the amount of $2.1 million or $2.2 million, and the U.S. Attorney's Office goes after that $800,000 retirement account, which is the only asset that Mr. Johnson has, he is going to be on the street. I think that is an economic circumstance which Your Honor should consider in deciding how much restitution to give him.

There are a number of alternatives here, Your Honor. We have taken the strong position that this is a home detention case, and the Government is taking the strong position that it's a jail case, a year and a day. Your Honor knows you have the power to make it a little of each.

If Your Honor feels that some jail is required, we would obviously not be thrilled with that, but it would certainly be better if you split it and allowed him to do

some of the time in home detention. During the home detention, he would obviously be at his parents' house taking care of his mom and dad, and that would seem to me a far better place than for him to be in jail.

Lastly, Your Honor is quite correct that Mr. Ketner lived the high life. He used some of that money for his own personal assets -- bought a car and funded his payroll and things like that. He was doing well. He was doing well until Mr. Johnson came forward and gave the Government evidence to charge him with what he did wrong.

Thank you, Your Honor. Unless the Court has any questions, I will submit.

THE COURT: One question for Mr. Stolper, where is Mr. Hadari?

MR. STOLPER: Your Honor, the Government interviewed Mr. Hadari, and we simply disagree with the assessment of Mr. Riddet as to Mr. Hadari's relative culpability. There is probably little more I can say about that other than simply we didn't consider Mr. Hadari to be frankly high enough in the pecking order of MCR to be worthy of bringing charges against. There are a number of other people at MCR who also had very senior positions, and as is customary in our office, we like to go after the principal leaders of any fraudulent conspiracy, and Mr. Hadari just didn't qualify.

THE COURT: That's what prosecutorial discussion is all about.

Mr. Johnson, have you read the several versions of the presentence report?

THE DEFENDANT: Yes, Your Honor, I have.

THE COURT: Have you had a chance to discuss those with Mr. Riddet?

THE DEFENDANT: Yes, I have.

THE COURT: And have you had a chance to review the draft sentencing memorandum that was handed out today?

THE DEFENDANT: Yes, I have.

THE COURT: Have you had a chance to discuss that also with Mr. Riddet?

THE DEFENDANT: Yes.

THE COURT: Is there anything you would like to say before I impose sentence?

THE DEFENDANT: I would like to apologize for trusting an individual that I clearly shouldn't have trusted. I would like to say that I really didn't know what was going on. I had no facts to make my judgment on and finally I found myself in the middle of this nightmare.

I made what I thought was a practical decision in putting Ketner in front of his lenders and putting some sunlight on what was going on and have him try and work this thing out. I had no idea what was going on at the time. It

was a practical decision. I know it was a wrong one now, and I apologize for that. But I never had any intent to steal money, and I never had any intent for him to steal money. I had every intent to do my job properly.

When I agreed to send the money, it was through negligence, I would say. It certainly wasn't by virtue of an intent to do something wrong and not do my duty as a closing agent. I had a partner who was an experienced closing agent who I relied on who didn't see anything wrong with it, and I apologize for the laws that got broke. That's all I can say.

THE COURT: Thank you.

One of the advantages for me in preparing a written tentative is that it makes clear the factors I have focused on in coming to a tentative decision. It also affords the parties an opportunity to bring to my attention factors that I either overlooked or didn't give appropriate weight to.

I think one such factor is the fact that Mr. Johnson did not benefit personally from this scheme. He admits his culpability and his mistakes, and it's clear he was a contributor to the bank's loss in this, but I think it's significant that he didn't gain particularly when I contrast that with Mr. Ketner's situation where he unquestionably personally gained and enjoyed the finest

things in life that this community can offer one.

Having looked at that factor, I still believe that this is a jail case. The extent of the fraud here is just too large to think that jail is not required in terms of recognition of the seriousness of the crime and in terms of deterrence, but I think that the Government's recommended sentence of a year and a day is sufficient on the facts of this case. I take into account all the conversations, including explicitly the fact that Mr. Johnson did not gain personally.

So, Mr. Johnson, if you rise, I will sentence you at this time.

It is ordered that the defendant shall pay to the United States a special assessment of $700, which is due immediately.

It is ordered that the defendant shall pay restitution in the amount of $2,515,560 pursuant to 18 USC Section 3663A, paid in proportion to the victims' losses.

The amount of restitution ordered shall be paid as follows: Victim, Household Finance Services -- and I will calculate this in the J&C, but it will be paid in the proportion of their actual loss of $6,666,667 divided by $9,333,334 times the amount of restitution ordered. Regions Bank also a victim, it's actual loss is $1,666,667. Again, the amount of restitution ordered here will be proportional.

Lloyds of London actual loss, $1 million. This loss will also be proportioned as well.

A partial payment of $100,000 shall be paid immediately. The balance shall be due during the period of imprisonment, at the rate of not less than $25 per quarter, and pursuant to the Bureau of Prisons' Inmate Financial Responsibility Program. If any amount of the restitution remains unpaid after release from custody, monthly payments of at least $500 shall be made during the period of supervised release. These payments shall begin 30 days after the commencement of supervision.

Nominal restitution payments are ordered as the Court finds that the defendant's economic circumstances do not allow for either immediate or future payment of the full amount ordered. If the defendant makes a partial payment, each payee shall receive approximately a proportional payment unless another priority order or percentage payment is specified in this judgment.

The defendant shall be held jointly and severally liable with co-participate Kenneth Ketner for the amount of restitution ordered in this judgment.

Pursuant to 18 USC Section 3612(f)(3)(A), interest on the restitution ordered is waived because the defendant does not have the ability to pay interest. Payments may be subject to penalties for default and delinquency pursuant to

18 USC Section 3612(g). The defendant shall comply with General Order No. 01-05.

All fines are waived as it is found that the defendant does not have the ability to pay a fine in addition to restitution.

Pursuant to the Sentencing Reform Act of 1984, it is the judgment of the Court that the defendant, Allen Edward Johnson, is hereby committed on Counts 2 through 7 and Count 15 of the 18-count Indictment to the custody of the Bureau of Prisons for a term of 12 months and one day. This term consists of 12 months and one day on each of Counts 2 through 7 and Count 15 of the Indictment to be served concurrently.

Upon release from imprisonment, the defendant shall be placed on supervised release for a term of three years. This term consists of three years on each of Counts 2 through 7 and Count 15, all such terms to run concurrently under the following terms and conditions:

1. The defendant shall comply with the rules and regulations of the U.S. Probation Office and General Order 318;

2. During the period of community supervision, the defendant shall pay the special assessment and restitution in accordance with this judgment's orders pertaining to such payment;

3. The defendant shall not engage as a whole or partial owner, employee or otherwise, in any business involving loan programs or investment programs without the express approval of the probation officer prior to engagement in such employment. Further, the defendant shall provide the probation officer with access to any and all business records, client lists, and other records pertaining to the operation of any business owned, in whole or in part, by the defendant as directed by the probation officer;

4. The defendant shall cooperate in the collection of a DNA sample from the defendant; and

5. As directed by the probation officer, the defendant shall apply monies received from income tax refunds, lottery winnings, inheritance, judgments, and any anticipated or unexpected financial gains to the outstanding Court-ordered financial obligation.

The drug testing condition mandated by statute is suspended based on the Court's determination that the defendant poses a low risk of future substance abuse.

Does the Government have any objection to self-surrender?

MR. STOLPER: No, Your Honor.

Could I have one minute with Mr. Riddet?

THE COURT: Sure.

(Counsel conferring)

MR. STOLPER: Your Honor, the Government has no objection to self-surrender and makes the necessary stipulations for it. The Government would request that the defendant be housed separately from Mr. Ketner, and if the notation could be made in the J&C, that would be helpful.

THE COURT: What is the reason for that?

MR. STOLPER: Your Honor, Mr. Johnson is a cooperator with respect to Mr. Ketner. It's the Government's position it's appropriate to keep them separated while they're in custody.

THE COURT: Do you know where Mr. Ketner is?

MR. STOLPER: I believe that he is at Taft, Your Honor, but I'm not certain.

MR. RIDDET: I think that's where he is.

THE COURT: Do you have any objection to that?

THE DEFENDANT: Well, I want to be as close as possible without being in the same place as Ketner.

THE COURT: Well, I'll recommend that he not be housed in the same facility as Kenneth Ketner and also recommend that the Bureau of Prisons designate him to a Southern California facility. It all depends on availability.

MR. STOLPER: We will work with the BOP, Your Honor, and Mr. Riddet to make sure that the Court's recommendations are followed.

THE COURT: Based on the Government's representation, I find by clear and convincing evidence that the defendant is not a flight risk or a danger to the community.

What about a date for surrender?

MR. RIDDET: I think it's taking six or seven weeks to designate. I'm just not sure. By the way, we would also ask that Your Honor put in the J&C a recommendation that he be housed at a federal prison camp. That's normally where he would go with a sentence like this.

THE COURT: I will make the recommendation. Let's make sure there is enough time. I will direct that Mr. Johnson surrender to the facility designated no later than August 15, 2008, at noon. If no facility is designated, you are to surrender on that date on/or before noon to the United States Marshal on the second floor of this building. Upon surrender, the bond will be exonerated.

MR. STOLPER: At this point, Your Honor, the Government would move to dismiss the remaining counts in the Indictment.

THE COURT: All remaining counts in the Indictment as to Mr. Johnson will be dismissed.

Anything further?

MR. STOLPER: No, Your Honor.

MR. RIDDET: Thank you, Your Honor.

THE COURT: Okay, thank you.

(Thereupon, the proceeding was concluded.)

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CERTIFICATE

I hereby certify that pursuant to Section 753, Title 28, United States Code, the foregoing is a true and correct transcript of the stenographically reported proceedings held in the above-entitled matter and that the transcript page format is in conformance with the regulations of the Judicial Conference of the United States.

Date: July 15, 2008

Sharon A. Seffens 7/15/08

SHARON A. SEFFENS, U.S. COURT REPORTER